



Thursday, 14 November 1957,
 at 10.50 a.m.

NEW YORK

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Chairman: Mrs. Aase LIONAES (Norway).

AGENDA ITEM 33

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/3077, A/C.3/L.460, A/3525, A/3588, A/3621, A/C.3/L.644-645) (continued)

ARTICLE 6 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mr. DELHAYE (Belgium) emphasized the fundamental importance of article 6 of the draft Covenant (E/2573, annex I B) and said he was glad the discussion had made a promising start. The Third Committee had as working documents, in addition to the draft article before it, proposals which the Commission on Human Rights had not accepted and observations by Governments. It would also be desirable to hear the views of those delegations which had not yet made them known. The Committee would then have to find a simple and balanced text which was generally acceptable.

2. For the time being, the Belgian delegation would make only two observations. The second sentence of paragraph 1 did not explicitly refer to the right to life of children before birth. The Committee would have to decide whether the provisions of paragraph 4, which was designed to protect the life of an unborn child whose mother had been sentenced to death, were sufficient or whether such protection should be extended to all unborn children.

3. He also drew attention to the second sentence of paragraph 3. So far as pardon and commutation of sentence were concerned, the hypothetical case covered by the provision was highly unlikely. In Belgium, as in many other countries, those two measures were purely personal prerogatives of the Head of the State; it would be difficult to impose legislative restrictions on their use. Amnesty created an even more difficult problem. In Belgium the granting of amnesty was often subject to certain conditions, such as the absence of a previous criminal record. It seemed hardly feasible to agree that amnesty might be granted "in all cases". He was sure the position of Belgium was unique on that point and he called the attention of other representatives to the provision in question.

4. The representative of the Secretary-General might perhaps explain, in the light of previous discussions and commentaries, the exact meaning to be attached to the second sentence of paragraph 3.

5. Mr. MASSOUD-ANSARI (Iran) felt that the wording of article 6 was not entirely satisfactory. The drafting of the first sentence in paragraph 1 was based on article 9 of the Universal Declaration of Human Rights; but while that article referred to arrest, detention and exile, article 6 of the draft Covenant was concerned with an inherent right of the individual which was the prerequisite of the enjoyment of other rights. Accordingly, the word "arbitrarily" could not properly be used in that context. It was conceivable that limitations might be placed on other rights, such as the right to liberty and security; that such limitations should be prescribed by law; and that any limitation which conflicted with the law was arbitrary. The same could not, however, apply to the right to life, for the only possible limitation on that right was death. The Iranian delegation thought that article 3 of the Universal Declaration of Human Rights and article 6, paragraph 1, of the draft Covenant might be combined to read as follows: "Everyone has the right to life; this right shall be protected by law." It remained to be decided whether the word "law" meant national or international, religious or civil law. The idea of what constituted a crime, and especially a political crime punishable by death, varied from one national legal system to another. It might therefore be desirable to provide international protection, and to add to the text he had just suggested the words: "in accordance with the rights and principles set forth in the Covenant".

6. Furthermore, all reference to the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide should be deleted from paragraph 2. The Covenants would form a human rights "code", and should accordingly contain all ideas and principles already embodied in previous conventions. The second part of paragraph 2 should therefore be replaced by the following phrase: "in accordance with law not contrary to the principles set forth in the Covenants".

7. The Iranian delegation had no objection in principle to paragraph 3, but reserved its right to speak again on the second sentence of that paragraph. It believed that paragraph 4 should be construed to mean that, if a pregnant woman was sentenced to death, the sentence might not be carried out before the child had been born.

8. Mr. THIERRY (France) said that, in his delegation's view, the Third Committee could and should succeed in evolving a satisfactory text for all those basic articles of the Covenant on Civil and Political Rights which concerned principles accepted by the most divergent legal systems. Differences of opinion about the validity of the rights referred to were far less marked than in the case of economic and social rights.

All that was needed in order to achieve wide agreement was to strive for clarity and precision in the drafting of provisions which raised no political problems in the real sense of the term.

9. The text of article 6 (E/2573, annex I B) was not completely satisfactory because, while no one challenged the right to life, considerable technical difficulties were involved owing, in particular, to the excessive vagueness of the wording of paragraph 1. It had been pointed out that the clause "No one shall be arbitrarily deprived of his life" could be construed in three different ways: first, to mean that the individual was entitled to complete protection against every threat to his life; secondly, to mean that he might not be deprived of his life except as provided by law; and thirdly, that no one might be deprived of his life even as provided by law if the law conflicted with natural law or international morality. It might be added that, according to the context, the provision could be interpreted as a condemnation of capital punishment for political offenses or as a condemnation of war. Those difficulties arose because the right to life had not been clearly defined and the idea itself was still confused.

10. There were two main conceptions of the right to life. According to the first, that right was a freedom conferred on the individual by society; in that case the signatory States would be undertaking to recognize that their nationals had a specific right. That conception was erroneous, because the individual obviously did not receive his life from society, and life was a fact rather than a right. It was also dangerous, for it implied that the State might, as it saw fit, limit or abolish a right which it had granted. There was a second conception which was both simpler and more logical: the right to life was the right of individuals to the protection of their life by society. The State conferred no right; it had a duty, that of protecting the life of citizens against anything which endangered it. The danger might come from other men, and protection against crime was inherent in the notion of civil and political rights. The danger might come from natural or social phenomena, and the protection of life against accident, sickness or poverty was inherent in the notion of economic and social rights.

11. Article 6 should be concerned solely with the civil and political protection of the life of the individual. From that standpoint, the phrase "everyone's right to life" was excellent, for it simply stated the need for legal systems so framed as to safeguard the security of citizens. Such legal systems prescribed penalties for offences against life; some of them provided for capital punishment. Capital punishment was the subject of paragraph 2, but in the French delegation's opinion the existing wording was not completely satisfactory. It would be more logical to refer first to the law concerning capital punishment, that is, to the cases in which that penalty might be prescribed, and then to deal with the problem of jurisdiction, that is, the conditions in which the death penalty might be imposed. Furthermore, the use of the phrase "as a penalty for" was unfortunate. The phrase suggested the idea of social vengeance and thus conflicted with the modern legal tendency to place the main emphasis on the preventive nature of the penalty.

12. For the foregoing reasons the French delegation proposed a number of amendments (A/C.3/L.645), which were solely designed to make the wording of article 6 simpler and more precise.

13. Mr. COX (Peru) said he did not consider the existing text of article 6 (E/2573, annex I B) satisfactory. Paragraph 1 stated that no one should be arbitrarily deprived of his life, while paragraph 2 listed the only admissible exceptions. In the opinion of the Peruvian delegation, the two main principles should first be stated, along the following lines: "The right to life is fundamental and is the basis of all other rights. The right to life shall be protected by law." The second part of paragraph 2 should also be amended and might be drafted as follows: "This Covenant confirms the principles and provisions set forth in the Universal Declaration of Human Rights and in the Convention on the Prevention and Punishment of the Crime of Genocide." The existence of a new crime, genocide, had been recognized in international law; the crime had existed for a long time, but the credit for denouncing it and providing for its punishment lay with the United Nations. A new paragraph should therefore be inserted in article 6, along the following lines:

"When deprivation of life has the characteristics of the crime defined in the Convention on the Prevention and Punishment of the Crime of Genocide, the provisions of that international legal instrument shall be applied."

14. The Peruvian delegation approved of paragraph 3, but thought that paragraph 4 should be made more specific, for it was important to protect mothers in order to protect their children. He therefore considered that the paragraph might be amended to read: "In no case shall sentence of death be carried out on a pregnant woman."

15. Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the present text of article 6 (E/2573, annex I B) was based on a proposal submitted to the Commission on Human Rights by the USSR delegation and supplemented by various amendments, including in particular amendments proposed by the Chilean, United States and Yugoslav delegations. There was no need to re-emphasize the importance of the article, which was self-evident.

16. The text had given rise to some criticism, particularly with regard to the first sentence of paragraph 1. That sentence, however, proclaimed a fundamental principle, which the remaining provisions of the article merely amplified. Its deletion would completely destroy the text adopted by the Commission on Human Rights. A study of the debates that had taken place at the eighth session of the Commission¹ showed that the sentence had already given rise to objection from those who were now criticizing it. The arguments used were no longer the same, at least in substance, but their trend remained unchanged. Certain delegations, including that of the United Kingdom, had proposed that a list of cases in which an individual might be legitimately deprived of his life should be included in article 6. As Mrs. Roosevelt had rightly pointed out² in her very pertinent criticisms of the United Kingdom amendment, a list of that kind would necessarily be incomplete. Its inclusion in the article, moreover, would be incompatible with the purposes of the Covenant. That was why the majority of the Commission on Human Rights had decided against that addition. The

¹/See Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4, paras. 167-174; and E/CN.4/SR.309-311.

²/See E/CN.4/SR.309.

opposition had been so strong that the sponsors of the proposal no longer wished to submit it formally and were trying to secure the outright deletion of the first sentence of paragraph 1. If it were decided to retain only the second sentence, which was less precise than the first, it would be easy to find in the domestic legislation of every State reasons to justify drawing up a list such as the one suggested.

17. The Soviet delegation did not consider the word "arbitrarily", originally proposed by Chile and the United States, to be particularly satisfactory and it would be glad if those two countries would restate their arguments in defence of the word. It had, however, agreed to its inclusion, in a spirit of compromise and because it had believed then as it did now that no perfect definition could be found. It would have no objection to deleting the word, if the majority of the Third Committee wished to do so. He reserved the right to speak later on the subject.

18. An extremely unconvincing attempt had been made to prove that the first sentence of article 6 had no precise legal meaning and that it might have dangerous consequences. Such arguments had little foundation. In the case of measures for safeguarding State security, for example, it should be borne in mind that such measures were, generally speaking, quite exceptional and were not necessarily prejudicial to the principle stated. If the sentence were retained, any decision to deprive an individual of his life which was not taken by a competent court could be subject to investigation with a view to determining whether or not the provisions of the Covenant had been violated. If it were deleted, on the other hand, a plea that the decision had been taken in accordance with domestic legislation would be sufficient to defeat any attempt at investigation. The deletion would radically change article 6, by making it apply only to sentences passed by courts, to the exclusion of all other cases in which individuals might be deprived of life. However, the purpose of the article was to proclaim the great fundamental principle that no one should be deprived of his life.

19. Sir Samuel HOARE (United Kingdom) expressed surprise that the Soviet representative should consider a proposal that the first sentence of paragraph 1 of article 6 should be deleted to be the same as the proposal made by the United Kingdom delegation in the Commission that the cases in which the taking of life should not be a crime should be enumerated. The two proposals were entirely different. The second was quite an appropriate method, and he was glad that the Netherlands delegation had submitted a proposal on those lines (A/C.3/L.651) to the Committee. The only thing against it was that the Commission on Human Rights had failed to accept it, and it was in the light of that circumstance that his delegation had sought another way of dealing with the difficulties created by the first paragraph of the article.

20. A general proposition that no one could be deprived of his life obviously required some qualification, and that not merely for cases where the death penalty was imposed. The argument of the representative of the USSR was based on the conception that that statement was a statement of principle. The Covenant on Civil and Political Rights was, however, concerned not with statements of principle but with legal obligations which States would have to fulfil. No State could

fulfil the obligation to ensure that no one in its territory or jurisdiction should be deprived of life. The USSR representative had admitted that in every country domestic legislation provided for cases in which the taking of life was justifiable and would not be an offence. But domestic legislation would, for every State that ratified the Covenant, have to conform to the provisions of the Covenant; there would be no right to make exceptions by domestic law to the obligations of the Covenant except so far as the Covenant itself provided for exceptions. It was necessary, therefore, if the formulation "No one shall be deprived of his life" were adopted, to qualify it so as to permit of those legitimate exceptions. The United Kingdom proposal for a listing of the exceptions had been rejected; the French proposal (A/C.3/L.645) had been found unsatisfactory; and the addition of the word "arbitrarily" was no solution because it left the sentence far too obscure and uncertain to be acceptable. It was for those reasons that his delegation had proposed the deletion of the sentence. If, however, the representative of the USSR could succeed in doing what the Commission, the United Kingdom delegation and other delegations had not been able to do, namely, to frame an acceptable provision which would both assert the principle and provide satisfactorily for the necessary exceptions to it, his delegation was perfectly ready to examine any such proposal on its merits.

21. Mr. TEJERA (Uruguay) said that he did not propose to analyse the text of article 6. His delegation considered it wholly unacceptable and proposed, together with the delegation of Colombia, that it should be replaced by a new text (A/C.3/L.644).

22. Although he was fully aware of the difficulties facing delegations from countries where capital punishment existed, it seemed to him anachronistic that in the twentieth century, at the current stage of moral enlightenment, a United Nations Committee should be attempting to define the cases in which it was lawful to kill a human being. Nothing could justify capital punishment; most of the arguments brought forward in its defence did not stand up to scrutiny. A murderer was almost invariably an unbalanced or mentally disturbed person who needed treatment; to execute him was both immoral and pointless. Capital punishment had no value as a deterrent, as a comparison of the criminal statistics of various countries demonstrated. It was also obvious that many death sentences were due to judicial errors and that the methods used by most police forces sometimes compelled innocent persons to confess to crimes which they had not committed. If a convicted person was executed, such errors could not be rectified nor could restitution be made for the wrong which had been done. The Uruguayan delegation therefore believed that instead of holding fruitless discussions on the merit of a particular wording, it would be simpler to discard the article and adopt the amendment which it had submitted jointly with the delegation of Colombia.

23. He was somewhat surprised by the statement in paragraph 2 of the article that sentence of death might be imposed "only as a penalty for the most serious crimes pursuant to the sentence of a competent court and in accordance with law not contrary to the principles of the Universal Declaration of Human Rights". There was, however, nothing in the Declaration to justify the existence of capital punishment. Any penal code providing for capital punishment and any legal

judgement imposing that sentence were ipso facto contrary to the Universal Declaration.

24. In conclusion, he stated that the adoption of a text prohibiting capital punishment would be in accordance with elementary moral principles and with the spirit of justice which should guide the work of the Third Committee.

25. Mr. CHAUDHURI (Pakistan) pointed out that the right to life was the most fundamental right and the one on which all other rights depended. In the article under consideration, the basic obligation was set forth in the second sentence of paragraph 1. With regard to the first sentence, he had the same reservations as some other delegations concerning the use of the word "arbitrarily", the vagueness of which had been fully emphasized. Moreover, the provisions of the Covenant on Civil and Political Rights were to enter into force as soon as the Covenant had been ratified. It must therefore be drafted in extremely precise terms. Accordingly, he agreed with the representatives of the United Kingdom, the Netherlands and Australia that the first sentence of the article should be deleted.

26. It was necessary to be realistic and to acknowledge that the right to life could not be absolute. Capital punishment was legitimate in some cases, provided that the sentence was imposed in accordance with domestic legislation. Article 5 of the Constitution of Pakistan provided adequate safeguards in that respect.

27. He saw no reason why a reference to the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide should not be included in paragraph 2 and he pointed out that that Convention had been ratified by his Government.

28. Paragraph 3 was in accord with article 209 of the Constitution of Pakistan, which gave the President the right to pardon condemned persons and to suspend or remit sentences. He did not think, however, that there should be any mention of amnesty. Amnesty was in fact a collective pardon and a reference to it was out of place in a text primarily concerned with the rights of the individual.

29. His delegation would vote for paragraph 4 of article 6.

30. Mr. MOROZOV (Union of Soviet Socialist Republics) said that his chief aim was to secure a text for article 6 which was acceptable to as large a majority as possible. The explanations given by the United Kingdom representative merely confirmed the point he himself had tried to make at the beginning of the meeting. However, in the hope of reaching a compromise, he suggested that paragraph 1 of the article should be redrafted along the following lines:

"Everyone's right to life shall be protected by law in accordance with the principle that no one shall be arbitrarily deprived of his life."

The word "arbitrarily" might be deleted, if a large number of delegations so desired. There was no need to point out that in the version he had suggested it was the second clause that gave the text its full significance. He was still prepared to vote for the text of article 6 as it stood, but would like to know the opinion of the United Kingdom and other members of the Committee on the text which he had just suggested.

31. He fully understood the motives which had prompted the amendment submitted by Colombia and Uruguay (A/C.3/L.644). However, the second sentence of that text gave rise to practical difficulties. At the 1949 conference at which the Geneva Convention relative to the Protection of Civilian Persons in Time of War had been drafted, the provision specifying the cases in which the courts of an occupying Power pronounce the death penalty had given rise to much controversy, which had shed light on the attitude of certain States. Moreover, the death penalty still existed in most countries. It therefore seemed preferable simply to rely on the guarantees provided for in paragraph 2. In addition, the first sentence of the text proposed by Uruguay and Colombia was not sufficiently precise. For all those reasons, he was still in favour of the text prepared by the Commission on Human Rights.

32. Sir Samuel HOARE (United Kingdom) said that by the change suggested by the USSR representative, the principle in question would become an essential part of the legal obligation on States under the article. The objection to expressing the principle as a legal obligation would thus not be met; and indeed the effect of the proposal would merely be to introduce by a back door the same difficulties as arose with regard to the existing text. He could not therefore accept it.

The meeting rose at 1 p.m.